

contradictory sworn testimony about his version of a conversation with a friend – Eckstein – and about his later correspondence with a Senator – McCain – about the same conversation. Both the conversation and the letter were material to the Senate Committee because of the Committee’s concern that campaign contributions caused the White House to inappropriately intervene in a DOI decision. Once proof of that connection failed, the lack of an equally compelling and provable alternative theory of motivation for any perjury reduced the small but significant discrepancies between Babbitt’s and Eckstein’s recollections of their conversation to far less consequential distinctions. Likewise, the possibility that Babbitt lied about whether he had the *intent* to mislead McCain in a letter that all agree had the *effect* of misleading the Senator became unworthy of the full moral authority of a criminal prosecution when it became clear that the letter was not a device to hide any criminal corruption of the decision.

In the final analysis, Babbitt’s defensive and combative posture before the Senate Committee, which contributed mightily to his testimonial missteps and the resulting investigation, was apparently due in large part to his embarrassment about deceiving an old friend and then inartfully trying to deflect questions about that deceit from a Senator who was both a legislative overseer and a friend. It also was apparently the product of his strongly held view that, despite appearances to the contrary, neither he nor his department had done anything wrong in the Hudson matter and that the congressional committees that later examined the issue were on a political “witch hunt.”<sup>732</sup> Such misplaced defensiveness did little to sharpen the precision of Babbitt’s answers to the Senators’ clear, unambiguous and well-founded questions about possible political corruption. Such defensiveness also dealt a disservice to – and

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<sup>732</sup>Babbitt G.J. Test., July 7, 1999, at 223.